IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.586 OF 2004

Vitthal Sarjerao Aslekar & Ors. ...Appellants
Vs.
The State of Maharashtra & Ors. ...Respondents

Shri Dilip Bodake for the Appellants.

CORAM : A. S. OKA, J.
DATE : AUGUST 08, 2006.

P.C.:

1. Heard Shri Bodake appearing for the Appellants. The Appellants are the original Defendants in a suit filed by the first Respondent-State of Maharashtra. The suit was filed by the first Respondent-State of Maharashtra on the ground that the suit property which is in possession of the Appellants was vesting earlier in the name of Ex-ruler of the State of Bhor and by operation of law the first Respondent became owner of the said property. The case of the first Respondent was that the Appellants have no right in respect of the suit property. The defence of the Appellants was that the ex-ruler of Bhor State sold the property to their predecessors by Sale Deed dated 11th November, 1959 and the property being the personal property of ex-ruler the same did not vest in the first

Respondent.

2. The Trial Court decreed the suit and the decree of the Trial Court has been confirmed in Appeal.

3. Shri Bodake appearing for the Appellants submitted that the suit filed by the Respondent was barred by limitation as the same was not filed within the stipulated period of twelve years. He submitted that no declaration has been claimed by the first Respondent as regards the Sale Deed executed by the ex-ruler of the State of Bhor on 11th November, 1959. He submitted that the case falls in the exception to clause 5(i) of the State Merger (Government Provinces) Order, 1941.

4. I have considered the submissions. The States Merger (Government Provinces) Order, 1949 was brought into force with effect from 01st August, 1949. As per Schedule II to the said order, the Bhor State merged in the province of Mumbai. About this factual aspect there is no dispute between the parties. The first Respondent placed reliance on clause 5(i) of the said

order which provides that all property wherever situated, which immediately before the appointed day is vested in Dominion Government for purpose of governance of merged State shall from that day vests in the Government of the absorbing province unless the purpose for which the property was held immediately before that day was central purpose. The contention of the Appellants is that the property never vested in the Bhor State as it was a private property of ex-ruler. It was contended on behalf of the Appellants that there was an agreement between ex-ruler of the merged State and the provincial Government under which the property was recognized as a private property of the ex-ruler. In my view, the courts below rightly held that the burden of proving the fact that the property was a private property of the ex-ruler was on the Appellants who were claiming on the basis of Sale Deed executed by the ex-ruler. The courts below have held that the Appellants have failed to discharge the said burden.

5. A contention was raised on behalf of the Appellants that suit property was not at all used for any public purpose during the regime of ex-ruler and

infact, it was used for residence of personal guests of ex-ruler. There is no merit in the said contention as found by the first Appellate Court. The property was admittedly called by name "Phoujdar Kacheri". In the evidence of Sarpanch of the concerned village it is brought on record that the erstwhile State of Bhor was using the suit property for Police Station. The said evidence indicates that the property was being used for public purpose.

6. It was not necessary for the first Respondent to challenge the Sale Deed executed by the ex-ruler. The contention of the first Respondent was that it was the property vesting in erstwhile State and it was not the property held by the ex-ruler. The Trial Court has framed a specific issue as to whether the first Respondent was bound by the Sale Deed executed by the ex-ruler. No objection was raised by the present Appellants to the framing of the said issue. The said issue has been answered in favour of the first Respondent. The suit filed by the first Respondent was on title and therefore once title was established by the first Respondent it was obvious that the Sale Deed dated 11th November, 1959 has been executed by a

person having no title to the suit property.

7. So far as bar of limitation is concerned, as the suit was filed by the State Government the same will be governed by Article 112 of the Limitation Act, 1963 and the period of limitation will be thirty years and not twelve years.

8. No substantial questions of law arises. Second Appeal is dismissed. No orders as to costs.

JUDGE